

STATE OF SOUTH DAKOTA AND TOWN OF OACOMA
v.
ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-82-A

Decided June 12, 1992

Appeal from a decision to take land into trust status for the Lower Brule Sioux Tribe.

Dismissed.

1. Appeals: Generally--Board of Indian Appeals: Jurisdiction--
Indians: Lands: Trust Acquisitions

The Board of Indian Appeals lacks jurisdiction to review decisions rendered by the Assistant Secretary - Indian Affairs except when those decisions are specifically referred to it by the Secretary or the Assistant Secretary, or when a right of review is established in regulations.

APPEARANCES: John P. Guhin, Esq., Deputy Attorney General, State of South Dakota, Pierre, South Dakota, for appellants; Mark A. Anderson, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Twin Cities, Minnesota, for the Area Director; Julian H. Brown, Esq., Pierre, South Dakota, for the Lower Brule Sioux Tribe.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellants State of South Dakota and Town of Oacoma seek review of a March 22, 1991, letter from the Aberdeen Area Director, Bureau of Indian Affairs (BIA; Area Director), to the Lower Brule Sioux Tribe (Tribe). This letter informed the Tribe that certain properties located within the Town of Oacoma and Lyman County, South Dakota, would be accepted into trust status upon satisfactory elimination of several title problems set forth in a preliminary title opinion. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal for lack of jurisdiction.

Background

The land at issue in this appeal is located next to Interstate Route I-90 in South Dakota. It is approximately 7 miles from the Tribe's reservation. The Tribe has stated that it intends to use the property for economic development purposes. Although the Tribe had attempted to develop a site on its reservation for this purpose, it indicated that it had been unable to attract businesses to the reservation despite the incentives it was offering, primarily because of the distance from I-90 and the lack of an airport.

By letter dated March 30, 1990, to the Superintendent, Lower Brule Agency, BIA, the Tribe requested that the land be taken into trust status for its benefit. The request was reviewed by the Superintendent, information was requested from various State agencies and subdivisions concerning the impact removal of the land would have on the State, comments were received from State and local officials, legal opinions on the effect of a trust acquisition were requested and provided, and a recommendation was made by the Superintendent to the Area Director that the trust acquisition be approved.

In reviewing the request, the Area Director asked for and received a preliminary title opinion from the Department's Field Solicitor's Office. By letter dated September 17, 1990, a preliminary title opinion was provided. The opinion listed seven possible problems with title. It also stated that the Area Director would need "Central Office approval to place [the] property into trust status" (Letter at 2).

The Area Director forwarded the trust acquisition request and its supporting information to the Assistant Secretary - Indian Affairs. By memorandum dated December 13, 1990, the Acting Assistant Secretary responded:

We have received your memorandum of August 10 with the attached documentation requesting our review and approval of a fee to trust transfer of approximately 91.96 acres located in Lyman County, South Dakota * * *.

* * * * *

The request is made pursuant to procedures promulgated under 25 CFR 151.3(a)(3) and 54 BIAM Bulletin No. 2, signed on April 20, 1990, which require review by the Secretary of all off-reservation fee-to-trust acquisitions, with the exception of those for housing for Oklahoma tribes and individuals.

We have determined the proposed acquisition is consistent with applicable guidelines and would be in the best interest of the [Tribe]. Therefore, you are authorized to accept the subject conveyance to the United States in trust for the [Tribe], subject to the receipt of satisfactory title evidence in accordance with 25 CFR 151.12.

By letter dated March 22, 1991, the Area Director informed the Tribe:

Pursuant to 25 CFR this is to advise you of the proposed acceptance of certain properties into Trust status for the [Tribe]. * * *

* * * * *

Upon satisfactory elimination of the objections listed in the Preliminary Title Opinion, dated September 17, 1990, I intend to accept the property in Trust.

The Board received appellants' notice of appeal from this letter on April 22, 1991. Briefs were filed by appellants, the Area Director, and the Tribe.

Jurisdiction

[1] Although not raised by any party in the briefs in this matter, the Board finds that it must dismiss this appeal because it lacks jurisdiction. The Board has previously considered the precise situation raised in this appeal. In City of Escanaba, Michigan v. Acting Minneapolis Area Director, 19 IBIA 247 (1991), the Board stated:

It is clear that, although the Acting Area Director notified appellant of the decision, the decision itself was made by the Assistant Secretary - Indian Affairs. The Board does not have jurisdiction to review decisions made by the Assistant Secretary, which are final for the Department of the Interior unless the Assistant Secretary provides otherwise in his decision. 25 CFR 2.6(c); see, e.g., Spokane Tribe of Indians v. Acting Assistant Secretary - Indian Affairs, 18 IBIA 379 (1990).

Even if the Acting Area Director's January 23, 1991, letter is construed as a decision made by the Area Director, the Board would lack jurisdiction over this appeal under 43 CFR 4.331, which provides:

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in Title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except--

* * * * *

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary - Indian Affairs prior to promulgation.

19 IBIA at 247-48.

For the same reasons, the Board lacks jurisdiction to review this decision. 1/

1/ The Board would, however, like to refer BIA to 25 CFR 2.7(a) which provides that "[t]he official making a decision shall give all interested parties known to the decisionmaker written notice of the decision * * *." If parties were fully informed when the Assistant Secretary has been involved in the decisionmaking process, needless and useless administrative appeals, with their resulting delay, could be avoided.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the March 22, 1991, letter of the Aberdeen Area Director is dismissed for lack of jurisdiction.

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge